

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

IN RE:)	
)	
)	CASE NO. 09-51833
CHARLIE WEBSTER PHILLIPS and)	
SHELBY JEAN PHILLIPS)	
)	
Debtors.)	Chapter 7
_____)	

MEMORANDUM OPINION AND ORDER

This case came before the Court on January 20, 2010, pursuant to Section 524 of the Bankruptcy Code, for consideration of a reaffirmation agreement between the above-referenced debtors (the “Debtor”) and Commerce Bank NA (the “Creditor”). At the hearing, Joseph M. Wilson appeared on behalf of the Debtors.

Pursuant to Section 524(c)(3), a reaffirmation agreement is enforceable only if such agreement is accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating the agreement which states that (1) such agreement represents a fully informed and voluntary agreement by the debtor; (2) such agreement does not impose an undue hardship on the debtor or a dependent of the debtor; and (3) the attorney fully advised the debtor of the legal effect and consequences of the agreement and any default under the agreement. 11 U.S.C. § 524(c)(3). Without such a declaration by the Debtors’ attorney, this Court may not approve the agreement. See In re Collmar, 417 B.R. 920, 924 (Bankr. N.D. Ind. 2009); In re Hart, 402 B.R. 78, 84 (Bankr. D. Del. 2009); In re Byers, No. 08-02228, slip op. at 1 (Bankr. N.D. Iowa Feb. 11, 2009) (2009 WL 427339); In re Minardi, 399 B.R. 841, 854-55 (Bankr. N.D. Okla. 2009).

In this case, the Debtors’ attorney, who represented the Debtors during the course of

negotiations with the Creditor, was not willing to sign the declaration as required by Section 524(c)(3). Therefore, the Court finds that the reaffirmation agreement should be adjudged as unenforceable.

It is therefore ORDERED that the reaffirmation agreement between the Debtor and the Creditor, filed on December 18, 2009, is hereby adjudged as unenforceable and, therefore, shall not be binding upon the Debtor.

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PARTIES IN INTEREST

Charlie and Shelby Phillips

Joseph M. Wilson, Esquire

Commerce Bank NA